

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 97 of 1984

MOTI RAM
V/S
POONMA RAM & ORS

Mr. RK THANVI, for the appellant / petitioner

Mr. MANISH SHISHODIA & Mr. MOHD.ASLAM, for the
respondent

Date of Order : 28.8.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

REPORTABLE

This appeal has been filed by the plaintiff against the judgment and decree of the learned Lower Appellate Court, District Judge, Balotra dated 28.5.84, accepting the appeal against the judgment and decree of the learned Munsiff Magistrate, Barmer dated 19.12.80, and thereby dismissing the plaintiff's suit for declaration and possession.

The facts of the case are, that on 18.7.75, the plaintiff filed the present suit, alleging inter-alia, that the property described in para-1 of the plaint belongs to the plaintiff, which has been shown by marks "A B C D E F G" in the site plan, and is in possession of the plaintiff for last 30 years. According to the plaintiff, four rooms

are there on the property. Out of this, the portion marked by red colour was on rent with Joga Ram, and a fire broke out. Likewise, a body of the motor vehicle of the plaintiff did lie there, and the property is being used for storing fodder, and tethering cattle. It was also pleaded, that on the portion marked by "F E D", stone slabs were erected, while fencing was there in some portion of "A B C", and in some portion, brick wall was erected, which has got dilapidated, and remainants are there. It is then pleaded, that on 30.4.74, the defendants committed trespass over the land, for which, FIR was lodged in Police Station on 30.4.72, and an application was also filed to Dy. S.P. on 1.5.72, whereupon challan was filed under Section 145 Cr.P.C. on 2.5.72, and the land in dispute, being "A B E F" was attached by the S.D.O. on 5.5.72. However, thereafter, the learned S.D.O. found himself to be not in a position to decide the question of possession, and directed the parties to have their rights adjudicated by Civil Court. Hence the suit has been filed. The land is in attachment, but since is under illegal possession of the defendants, prayer for possession has also been made. Inter-alia with these averments, a decree for declaration of title, and possession has been prayed for.

The defendants filed a collective written-statement on 8.4.76, contesting the suit, denying the land to be belonging to, and to be in possession of the

plaintiff, specially "A B E F". It was also pleaded, that this disputed land is in possession of defendant No.1, who has purchased it by registered sale deed dated 21.6.66, from one Purkha Ram, for a consideration of Rs.800/-, and since then is continuing in possession, where he has erected a room, one Jhumpa, and a Chapara, and on two sides, has erected boundary wall of stone slabs. According to the defendant, prior to it, since 6.2.56, the land was in possession of the seller, Purkha Ram, who had purchased three plots, including the disputed plot, from erstwhile Jagirdar Khum Singh, vide registered sale deed dated 6.2.56. Copies of the two sale deeds were produced. It was then pleaded, that the defendants' seller was granted permission by the Municipality, Barmer on 24.8.57, for raising construction on the disputed plot and two other plots, wherein this plot was shown as plot No.7. Thus, the plot was not in possession of the plaintiff, plot No.6 however was lying open in the east of the disputed plot, whereupon of course, the plaintiff has illegally taken possession, and therefore, for the last one year, he is trying to grab the defendant's land as well. According to the defendant, since he is continuing in possession over the land in dispute since 21.6.66, there is no question of his having committed trespass on 30.4.72. Lodging of the FIR and initiation of 145 proceedings of course was admitted, but then, it was pleaded, that thereby neither the plaintiff's title, nor possession is established,

rather the land was found to be in possession of the defendant. It was then pleaded, that at the time of attachment, since the defendant was living in the property he was not dispossessed. Then in additional pleas, it was pleaded, that the property in question was in possession of the defendant's predecessor Purkha Ram, from 6.2.56 to 20.6.66, and since 21.6.66 it is continuing in his possession. Thus, the plaintiff had never been in possession for the last 20 years, and since the defendant and his predecessor were in adverse possession, the suit is barred by time. Then it was pleaded, that the S.D.O., in his order dated 5.5.75, has mentioned that the Municipality claims the land to be belonging to itself, as such, the Municipality is a necessary party, and compensatory costs were also claimed.

Learned trial Court framed as many as 8 issues. Issue No.1 was, as to whether the disputed plot is of the ownership of the plaintiff. Issue No.2 was, as to whether the disputed plot is in plaintiff's possession for last 30 years, and issue No.3 was about the defendant having trespassed on 30.4.72. Then issue No.4 was about plaintiff's entitlement to decree for possession, issue No.5 was about the suit being barred by time in view of the plea taken in para-1 of the additional pleas. Then issue No.6 was about Municipality being necessary party. Then issue No.7 was about defendants' entitlement to

compensatory costs. While issue No.8 was about relief. The parties led their evidence, and after completing the trial, the learned trial Court vide judgment and decree dated 19.12.80, decreed the plaintiff's suit.

Deciding issue No.1, it was held by the learned trial Court, that the plaintiff's case is on the basis of possessory title, while the defendant claimed on the basis of documentary title of purchase. In this background, considering the evidence of the parties, it was considered, that the motor body of the plaintiff is lying there, which has been admitted by D.W.7 also, in the manner, that half portion thereof is on the land in question. Then this D.W.7 has also admitted, that it is lying in the same condition since before the death of her husband, and that her husband died in Samvat 2023. This Nenu D.W.7 is the widow of the seller of the defendant. Thus, the learned trial Court found, that plaintiff is in possession of the land for last more than 12 years, and thus, has possessory title. Then considering the defendants' case, it was considered, that defendant had purchased the land vide Ex.A-2, and D.W.7 Nenu has clearly deposed, that when her husband sold the land to defendant, land was lying open, and was not in their possession, though fencing was there. Then D.W.6 has deposed, that he did not see possession of Purkha on the land in question. Thus, it is not established, that the land was in possession of Purkha. Then Ex.A-2 was

considered, and it was found, that the land sold was 32 हाथ north south, and 22 हाथ east west, while if plot No.4 and 7 are both held to be of Purkha, it exceeds 32 हाथ north south. Then it was considered, that in Ex.14, plot No.4 and 5 can be said to be of Purkha Ram, but not plot No.7, as according to Purkha Ram's wife, Nenu (D.W.7), out of her plots, she has one plot, one has been sold to Taja Ram, and this third disputed plot, in the opinion of the learned trial Court, does not fall within the measurement 32 हाथ north south. Then it was noticed, that from Ex.A-1 if plot No.4 and 7 are taken to be of Purkha, then Ex.A-2 is wrong, as the total land, north south, is 32 हाथ. It was also considered, that according to D.W.6, the house of Purkha is towards north of Punma, and he did not see possession of Purkha, on the plot of Punma (the land in dispute). While on the other hand, D.W.5 Gulab Singh, has proved Ex.9 to be the site plan issued by the Municipality, and therein, one big plot of Motiram is shown to be situated towards south of Taja Ram. Thus, the issue was decided in favour of the plaintiff. Then deciding issue No.2 it was considered, that the plaintiff has deposed, that in 1956, when the roads were laid down, his Bara was divided into three parts, and some parts went in the road. Then P.W.3 & 4 have deposed to have erected stone slabs at the behest of the plaintiff. P.W.4 has also deposed the plot to be 60-70 ft. east west. Then D.W.5 Gulab Singh has also established plaintiff's possession vide Ex.9. Then after considering the other

defense evidence also, it was found that it is not established that the plot was in possession of the defendants, rather the plaintiff's possession is established. Deciding issue No.3, it was found, that it cannot be believed, that Punma was in possession since before 30.4.72. Then issue No.4 was decided in favour of the plaintiff in view of the decision of issue No.1, 2 and 3. Regarding issue No.5, it was found, that the suit could be filed within 12 years of dispossession. The plaintiff has lodged the report with police in 1972, and according to the orders of the S.D.O., the suit has been filed, which cannot be said to be time barred. Reliance was placed on the judgment of Hon'ble the Supreme Court, in Somnath Berman Vs. Dr. S.P. Raju & Anr., reported in AIR 1970 SC 846. Then issue No.6, about Municipality being necessary party was also decided against the defendant, obviously in issue No.7, the defendant was not held entitled to compensatory costs. Consequently, the suit was decreed as above.

The learned District Judge made certain observations, about the conduct of the proceedings of the learned trial Court, and directed a report to be submitted to the Registrar, Rajasthan High Court, in inspecting the site and not preparing the note, then belatedly giving the judgment after hearing the arguments and so on. However, deciding on merits, it was held, that admittedly, land

earlier belong to Khum Singh, Jagirdar, who had let it out to various other persons. Jagirdari was resumed in the year 1955-56, and some persons continued to be in illegal possession, while some persons purchased the land from Jagirdar, remaining land vested in Municipality. Then it was found, that it appears from Ex.11, being letter of the Collector dated 20.9.61, that after resumption, Municipality established a planned colony in the name of Nehru Nagar, and in that process, prepared a survey list, as appear from Ex.12, 13, 14 being the survey plans. Then it was noticed, that in Ex.12, the land marked by red colour was shown to be in possession of Motiram (the plaintiff), in east whereof was the possession of Navla Mahetar, and in the east of Navla Mahetar possession of Purkha Ram was shown, and the possession of Purkha Ram was also shown towards the south of the land in possession of Motiram. This shows, that there was no uniformity in the land, and in order to establish a planned colony, the Municipality did plotting, and marked roads and lanes, and allotted plots to the persons in accordance with their possession, which appears from Ex.5, being letter of the Municipality to Motiram, calling him upon to appear on 13.3.79 at 10 AM for allotting plot. Then it was observed, that in rent note Ex.1 dated 9.1.67, there is no reference of the plot, nor boundaries are mentioned. Then in Ex.2, four house and Baras of Motiram have been shown, and it is not clear, as to, to which property, the rent note related.

Then Ex.3 is the notice to Motiram, for encroachment on the municipal road. Similar notice was also given vide Ex.4 regarding raising of construction. Then vide Ex.6, the plaintiff was directed to remove encroachment. Then Ex.9 is the municipality's approved plan. Then by collective reading of Ex.9, Ex.2, Ex.A-1 and Ex.A-6, it was observed, that it cannot be accepted, that the disputed land was in possession of the plaintiff. It was then found, that the sanction of construction does not relate to land in question, but relates to the portion "A B C D", as therein 20 ft. wide way has been shown in the east, as the measurements of plot situated in the east of the way tallies with the dimensions given in Ex.2. Then after discussing other documents also, it was concluded, that from the documents and evidence produced by the plaintiff, the plaintiff has not been able to connect them with the property in question, rather the learned trial Court has not properly considered these documents, nor has properly appreciated them. Then discussing the documents of the defendant, it was found, that the defendant had purchased the property vide Ex.A-2, wherein measurements have been given to be 32 हाथ north south, which is ordinarily equal to 48 ft. while the plot is 58 ft. Then east west does show to be 22 हाथ, which comes around 33 ft. while the land is 32 ft. 9 inch on one side and 33 ft. 7 inch on the other side. Then in the east, the land of Jagirdar Khum Singh has been shown, which is the same land, which is in possession of

Motiram, plaintiff. Thus, the plaintiff did not purchase the land from Khum Singh, rather plaintiff was tenant earlier, and continued in possession, and then in west, house of Navaram Mehtar has been shown. Then in north, 10 ft. lane has been shown, and in the south public way is shown, which is there. With these recapitulations, the question was posed, as to whether the defendants' predecessor also purchased this very land, and it was considered, that in the sale deed dated 6.2.56, Purkha Ram has purchased 66 हाथ x 32 हाथ land, but then, it is clear, that in view of this land measuring 32 x 66 हाथ, Municipality must have given three plots. In the sale deed of 6.2.56, public way shown in the north, and on the other three sides, Khum Singh's land has been shown, while from Ex.12, it is clear, that therein Purkha Ram's land has been shown in the east of land of Navaram Mehtar, and therefore, that is the land, which is purchased by Purkha Ram, and it is more probable that the Municipality would allot plots towards the east of Navaram Mehtar only, as far as possible to Purkha Ram, and therefore, it is more probable that out of the three allotted plots, the plot in question was allotted to Purkha Ram, and Purkha Ram obtained permission for construction in the year 1957, which was granted in respect of the plots No.4, 5 and 7, which plot No.7 is the plot in dispute, and that if Purkha Ram would not have been allotted the land, he would not have been given permission to raise construction. Thus, it was found, that from the

documents it is established, that the defendant has title over the land. Then discussing the oral evidence of the plaintiff, it was found, that simply because two wheels of the motor body are on the vacant land, the land cannot be said to be in possession of the plaintiff. Then Nenu's statements had been referred about having purchased the land from Khum Singh, and then having sold one plot to Taja Ram, and having sold the disputed land to the defendant. Thus, on the basis of volume of evidence, it was found that plaintiff has failed to establish his possession over the land for last 20 years, or about the defendant having trespassed on 30.4.72, and thus, all the other issues were decided against the plaintiff, and the suit was dismissed.

This appeal was admitted on 28.11.84 by framing the following substantial questions of law:

"(1) Whether the learned District Judge was in error in holding that the suit filed by the plaintiff on the basis of mere possession without having a title as purchaser from the Jagirdar as tenant was not maintainable after the period of six months under the provisions of Specific Relief Act.

(2) Whether in the circumstances of the case, the learned District Judge was right in reversing the findings of the learned trial Court without considering the evidence of the defendants witnesses D.W.2, D.W.6 and D.W.7 relating to possession and the document Ex.A/2 and the sale-deed dated 6/2/56 relating to measurement of the property in dispute."

Arguing the appeal, it was contended that the

plaintiff can very well maintain the suit for possession on the basis of possessory title during any time within a period of 12 years of his dispossession. It was wrong on the part of the learned lower Appellate Court to assume that after expiry of six months, the plaintiff cannot maintain the suit unless he has acquired a documentary title. It is contended that if the suit were to be filed within six months, then all that is required to be established by the plaintiff is, that he was in possession irrespective of any title, but then, if the suit is filed after six months, the plaintiff is also required to establish his right to possession. In that view of the matter, the question required to be seen is, as to whether the plaintiff has acquired possessory title, and thus, the question No.1 is required to be answered in favour of the appellant. Then arguing the question No.2, it was contended that apart from the plaintiff's evidence, on a bare reading of statement of D.W.2, 6 and 7 in conjunction with Ex.A-2 and Ex.A-6, it is clear that the plaintiff's suit could not be dismissed. Elaborating the arguments, it was contended that of course, the boundaries given in Ex.A-2, being the sale deed in favour of the defendant by Purkha Ram do relate to the land in question, but then admittedly, the defendant's case is, that he has come into possession only by purchase from Purkha Ram, and admittedly Purkha Ram has purchased the land vide Ex.A-6, and had come into possession thereby only. In that background, according to

the learned counsel for the appellant, when it is clear, that the land in question did not form part of the land sold vide Ex.A-6 by Khum Singh to Purkha Ram on 6.2.56, simply because Purkha Ram executed sale deed in favour of the defendant, being Ex.A-2, it cannot be said that the land was in possession of the defendant, or Purkha Ram, so as to non-suit the plaintiff. In this regard, it was submitted that a look at the sale deed Ex.A-6 does show that the total land sold was north south 32 हाथ, and east west 66 हाथ. It is contended that in this Ex.A-6, single boundary description is given, with respect to the entire land viz., having opening in the north, and on the other three sides, the land of the seller is shown to be existing. In that view of the matter, the land is required to be taken to be one Chunk, while the land covered by Ex.A-2 (land in question) does not fall within the description given in Ex.A-6, inasmuch as, in Ex.A-2, the description given is that in the north, there is a 10 ft. wide lane, and thereafter, the seller's land, while in the south, there is public way. Then in the west land of Mehtar Navaram has been shown. Thus, according to this document, towards the north of the land in question, is 10 ft. lane, and thereafter seller's own land, and the land sold by this document also measures 32 हाथ north south. It was contended that, thus, according to this description, the land of Purkha Ram should be more than 64 हाथ north south, to the extent of 10 ft. lane, and then, it should be 66 हाथ east

west either, as in the site plan, Ex.A-1, plot No.4 and 5 are said to be of Purkha Ram, out of which, plot No.5 has been sold to Taja Ram, and thus, 44 हाथ land is covered by plot No.4 and 5, with the result, that the land covered by Ex.A-2 is not at all established to be forming part of the land, covered by Ex.A-6. Reliance was also placed on the statement of Nenu, D.W.7, who is none-else than the wife of Purkha Ram, the person in whose favour, Ex.A-6 was executed, and who had executed Ex.A-2, and she has clearly deposed, that one plot was sold earlier (to Taja Ram), one is retained by her, and one was sold to Punma. It was also pointed out, that the evidence of the defendants' side is seriously discrepant, so much so, that D.W.3, far beyond the defendant himself, has deposed that when he was inducted as tenant, Purkha Ram was living therein, which is nobody's case. It was then contended, that when the land is described in Ex.A-6 by measurements and boundaries, both, it was not open to the learned trial Court to assume that in view of that plot, Municipality may have allotted three plots, out of which, one may be of plot No.7, when this plot No.7 does not fit in Ex.A-6, and it is nobody's case, that in view of the land of Ex.A-6, the land in question was allotted to Purkha Ram. Thus, since the defendant has trespassed over the land, only on 30.4.72, and when admittedly, the body of the plaintiff's motor vehicle is lying there on the land in question as well, it is clear that the plaintiff was, and is in possession of the land,

and as admitted by D.W.7, it is lying there since before 2023, the suit could not be dismissed.

On the other hand, learned counsel for the respondent supported the impugned judgment. It was contended that in Ex.A-6, three plots had been sold, measuring 32 x 66 हाथ, and it is not the case, that one rectangle chunk was sold, and that plot No.4, 5 and 7 collectively measure 32 x 66 हाथ, and therefore, Ex.A-2 is perfectly valid, and plaintiff has no case. It was then pointed out that plaintiff, P.W.2, claims on the basis of Ex.9, to the effect, that thereby, he sought permission for construction, and then defendant had trespassed, while a look at Ex.9 shows, that it is dated 11.9.74. Then plaintiff has also deposed that he did not ask for permission regarding the land of Joga Ram, as Municipality was treating it to be its own land. Then he has also deposed that in Ex.9, Navaram has been shown to be western neighbour, while it is not shown in Ex.9. Thus, it is clear that defendant has not trespassed over the land, with respect to which, permission was sought vide Ex.9. Likewise, significantly, the plaintiff has not deposed the permissions of the defendant, being Ex.A-1, and Ex.A-4, to be a forgery, rather he has deposed that Purkha Ram was granted permission, with respect to northern land, and not with respect to his land, and that he has not bound by the plan, that may have been sanctioned to the defendant. Then

the statement of P.W.1, Ranjeet Singh has been referred, who has deposed that Purkha Ram was given land by moving forward and backward. Then referring to statements of P.W.3 and 4, it was sought to be contended, that from a reading thereof, it is clear that they cannot be believed to have erected stone slabs, as sought to be deposed by them. Then reliability of P.W.5 was also contended, by submitting that he deposes the existence of three Oras only, while according to the plaintiff, there are four Oras, apart from the fact, that there is discrepancy in the description of boundary as deposed by him. Then the statement of P.W.7 was referred, as he has deposed that before giving permission, the site was inspected, and that the plaintiff did not ask for any permission. Thus, it was contended that the permission is not with respect to plot No.7. Then regarding D.W.6, for whom the learned counsel for the appellant had contended, that he has deposed that Purkha Ram was not in possession of the land of Punma, according to learned counsel for the respondent, this witness has deposed that he had no occasion to go on the land before it being purchased by Punma. Thus, it was sought to be contended by learned counsel for the respondent, that this witness does not negative the possession of the defendant. Then D.W.2 was referred, who is the neighbour of Taja Ram, and has deposed that he never saw the possession of Khum Singh. Then, by reading the statement of D.W.7, it was contended, that she has deposed that there was a fencing, which

obviously, was erected by Purkha Ram, and to this witness no question was asked about Ex.A-1 and A-4. Likewise, the statement of D.W.4 was read, to contend, that he has proved Ex.A-1 and A-4, whereby permission to raise construction was granted to Purkha Ram with respect to the land in dispute. Next contention raised by the learned counsel is, that the submissions are made by the learned counsel for the appellant on the basis of the defendant's documents, while the established legal position is, that the plaintiff has to stand on his own legs, and cannot take advantage of the weakness of the defendant, even if there be any. In this regard learned counsel relied upon the judgment of Hon'ble the Supreme Court, in Brahma Nand Puri Vs. Neki Puri, reported in 1965 SC-1506, another judgment of Madras High Court, in Enose Vs. Thankappan, reported in 1999 A I H C-1469, and Shyama Charan Rout Vs. Satyan Jena, reported in 1999 AIHC-3013. Learned counsel then submitted, that the plaintiff has not proved his possession over the land, and that Ex. 9 does not relate to the property in question, but is related to another property. Thus, since the plaintiff has not been able to prove his case, irrespective of any weakness of the defendant, even if there be any, the suit was required to be dismissed, and has rightly been dismissed.

In rejoinder learned counsel for the appellant submitted, that the plaintiff's case is that the plot was

let out to Joga Ram on 12.5.1967, on this land the body of motor vehicle of the plaintiff was lying, the land was being used for storing fodder, and tethering cattle, which is deposed by P.W.2, 5, 6 and 7. Referring to para-2 of the plaint, and written statement, it was pleaded, that the plaintiff had come with a categoric case about his possession, and by way of act of possession, it was pleaded that his motor vehicle body was lying there, and in the written statement no reply has been given in this regard. Then, realising the difficulty, the defendant has come with varying versions about the body of the motor vehicle to be lying there, though in the written statement nothing was said. It was contended, that D.W. 1 has chosen to depose that it was placed thereafter the dispute arose. While D.W.2, whose statements have been recorded on 15.2.1979, has deposed that the body is lying on the nearby land, where also it is lying for the last four years. Then, D.W.3 has deposed, that it was not lying there when he took the land on rent in Samvat 2026 (corresponding to the Calendar year 1969). As against which, D.W.7 has clearly deposed, that the motor body of the plaintiff is lying there for the last so many years before her husband's death. Her husband is deposed to have expired in Samvat 2023 (corresponding year 1966). Thus, it is clear, that the land was in settled possession of the plaintiff, and the plaintiff has been dispossessed on 30.4.1972, and from that date the plaintiff is entitled to file the suit for possession, before expiry

of 12 years, and is entitled to decree, unless the defendant establishes his better title. Reliance in this regard is placed on the judgment of Hon'ble the Supreme Court, in Nair Service Society Ltd. Vs. K.C. Alexander, reported in AIR 1968 S.C.-1165.

I have considered the submissions, and have gone through the record.

At the outset I may consider the legal propositions propounded by both the learned counsel.

So far as the legal proposition propounded by the learned counsel for the respondent is concerned, that the plaintiff has to stand on his own legs, and in order to have the suit decreed the plaintiff has to prove his case on his own evidence, and cannot depend or take advantage of the weakness of the defendant, much less on mere weaknesses of the defendant. In this regard reliance has rightly been placed on the judgment of Hon'ble the Supreme Court, in Brahma Nand's case, and even the learned counsel for the appellant did not dispute this, as an abstract legal proposition. In that view of the matter, learned counsel for the appellant invited my attention to the material on record, from which, according to him, the plaintiff's case is proved.

Likewise, the other legal proposition propounded by the learned counsel for the appellant is, on the basis of the judgment of Hon'ble the Supreme Court, in Nair Service Society's case, wherein Hon'ble the Supreme Court has held, that where the suit for possession is filed within a period of six months, then the plaintiff need not prove his title, and even the title of the defendant does not avail him. However, if the period of six months has passed the question of title can be raised by the defendant, and if he does so, the plaintiff must establish the better title, or fail. Thus, according to Hon'ble the Supreme Court, the right is only restricted to possession only in a suit under Section 9 of the Specific Relief Act (corresponding to present Section 6), but that does not bar a suit on prior possession within 12 years, and title need not be proved, unless the defendant can prove one, and this principle has been propounded relying upon the provisions of Article 64 of the Limitation Act. It has further been held therein, that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership, has a perfectly good title against all the world, but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law, within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is, for ever extinguished, and the possessory owner acquires an absolute title. In the event

of disturbance of possession by a third party, and not the owner, the plaintiff can maintain a possessory suit under the provisions of Specific Relief Act, in which title would be immaterial, or a suit for possession within 12 years, in which the question of title could be raised.

I may at this place also refer to the judgment of Hon'ble the Supreme Court in Somnath Berman's case, which was relied upon by the learned trial court. In that case the facts were, that the suit was filed by the plaintiff for possession, alleging to have purchased this land from Jamsheer Khan, and was in possession, when the defendant trespassed into the said property and took possession of the same, thereafter he illegally sold the same to the first defendant. The defendants denied the plaintiff's title over the property, so also the possession of the same, and set up their title under the sale deed. It was found by the learned trial court, and the High Court, that the plaintiff has not proved his title, and that the defendants have not established their plea of title by adverse possession, and the contention raised was, that the plaintiff, who based his suit on title and prior possession, having failed to establish this, the suit should fail. On these facts Hon'ble the Supreme court held in para-9 and 10 as under:-

"9.....In our opinion the possession of the

plaintiff prior to 1945 is a good title against all but the true owner. The defendants who are mere trespasser cannot defeat the plaintiff's lawful possession by ousting him from the suit property. Possessory title is a good title as against everybody other than the lawful owner. In *Ismail Ariff v. Mahomed Ghouse*, (1893) 20 Ind App 99 (PC), the Judicial Committee came to the conclusion that a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Therein it was observed that the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.

10. In *Narayana Row v. Dharmachar* (1903) ILR 26 Mad 514 a bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ., held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong-doer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by showing that the title and right to possession are in a third person...."

Thus, in view of the above judgments of Hon'ble the Supreme Court, a suit for possession can be filed by the plaintiff who had been in possession of the property, and had been dispossessed by the defendant, within a period of 12 years from such dispossession, and in that suit the plaintiff need not establish his title, of course, the defendant can set up his title, and in that event the plaintiff shall have to establish better title, or shall fail. In other words if the plaintiff is able to establish that he was in possession of the property, and has been

dispossessed and 12 years have not lapsed since the date of such dispossession, and the defendant fails to establish the better title to be vesting in himself, even then the plaintiff is entitled to decree for possession. The case in hand is, therefore, required to be considered in the background of this legal proposition. Accordingly, it is to be seen, as to whether the plaintiff has been able to prove that he was in possession up to the date of being dispossessed by the defendant i.e. April, 1972, and if so, then the next question to be seen is, as to whether the defendant has been able to establish his better title? If either of these questions are answered against the plaintiff, suit is to fail, and if both the questions are answered against the defendant, then only the suit can be decreed.

In this background I revert back to substantial questions of law formulated by this Court, while admitting the appeal, as they are the precise questions required to be answered in order to decide the appeal. Coming to the first question, as framed, in my view, the judgment in Nair Service Society's case and in Somnath's case, by itself are complete answer in favour of the appellant, and that question need not detain me any longer. The second question of course is required to be gone into, inasmuch as the question comprehends, as to whether the learned District Judge was right in reversing the finding of the learned

trial court without considering the evidence of D.W.2, 6 and 7 relating to possession, and the documents Ex. A-2 and A-6 relating to the measurement of the property in dispute. Obviously, the question comprehends, as to whether the learned lower Appellate Court was in error in reversing the finding about the plaintiff's possession, and about the defendant's title.

The learned lower Appellate Court, as noticed above, has held, that in Ex.12 the land marked by red colour was shown to be in possession of plaintiff, and in east whereof was the possession of Navla Mehtar, and in the east of Navla Mehtar the possession of Purkha Ram was shown, and the possession of Purkha Ram was also shown towards the south of the land in possession of Moti Ram. This was considered to show that there was no uniformity in the land, and the Municipality did plotting, and marked roads and lanes, and allotted plots to the persons in accordance with their possession. It may at once be observed, that from the reading of the entire record, even very closely, it is clear that it is nobody's case that any allotment of any plot was made by the Municipality in favour of any of the parties to the litigation. No document of allotment has been placed on record to show, as to which particular plot was allotted to either of the parties. In that view of the matter, may be that the Municipality developed a planned colony, but then, the question of title

of the parties is required to be gone into on the basis of the documents of title. With this, the learned lower Appellate Court has observed, that in rent note Ex.-1 there is no reference of plot, nor boundaries are mentioned, while in Ex.-2, four houses, and Bara of Moti Ram has been shown, and it is not clear, as to, to which property the rent note relates. Then, Ex. 3 and 4 are taken to be the notices of the Municipality for encroachment, and raising construction, and vide Ex.-6 he was directed to remove encroachment, and thus by collective reading of these documents, in conjunction with Ex.A-1 and A-6, it was also observed that it cannot be accepted that the disputed land was in possession of the plaintiff. Then, it was considered that the sanction for construction does not relate to the land in question. The sustainability of these precise findings is to be gone into, while deciding substantial question of law framed. From the reading of the finding, it is clear, that while coming to this conclusion the evidence of D.W.2, D.W.6 and D.W.7 has not been considered at all.

In this background, a look at the statement of P.W.2 shows, that he has clearly deposed, that the plot in question was let out by him to Joga Ram in the year 1967 vide Rent Note Ex.-1, and has also proved Ex.-1. Then, he has deposed that on 12.5.1967 a fire broke out, and the entire stored fodder got burnt, thereafter he left the plot, and has died. In cross-examination the boundaries of

the plot let out to Joga Ram were put, and the plaintiff clearly deposed the boundaries, which relate to the land in question. Then, certain questions were put regarding proof of rent note, which also could not shake the plaintiff. At this place I may look at the statement of D.W.7, which shows, that in the cross-examination she has admitted, that a fire did break out, and therein three Jhupa, and fencing got burnt, and some portions of the plaintiff's fencing also got burnt. Since D.W.7 identifies the land in question as her Bara, therefore, it clearly corroborates that the fire did break out in the Bara. As against this, significantly D.W.1 has chosen to depose the Bara to have been let out to Nanga Jat, and some portions to Ramji in Samvat Year 2026, and then to Girdhari in Samvat 2029, which are said to be in possession till the date. 2026 corresponds to Calendar Year 1969, and 2029 corresponds to Calendar Year 1972. In that view of the matter, reverting to the statement of P.W.2, it is very significant to note, that there was no cross-examination on the aspect of fire breaking out in Bara in question on 12.5.1967, therefore, when the date of breaking out fire is not assailed in cross-examination, and it is admitted by D.W.7 that the fire did break out, then the question arises, as to whether the story of the defendant letting out the Bara in Samvat 2026 and 2029 can be believed, when it is not the case of the defendant, that any fire broke out when the land was in possession of his tenants, and when he claims to have come

in possession under the sale deed Ex.A-2, which is dated 21.6.1966, as it is not the case of the defendant, that after his purchase any fire broke out, and thereafter he reconstructed the constructions which are said to have been let out. In this sequence a look at the plaint shows, that in para-2 the plaintiff has clearly pleaded to be in possession as an owner for the last 30 years, on which four rooms are there, and on 12.5.67 when it was on rent with Joga Ram for storing fodder, fire broke out, the motor vehicle body of the plaintiff was lying there, which is continuing to lie, and the plaintiff is using the property for storing fodder, and tethering cattle. In written statement all that has been pleaded in para-2 is, that para-2, of course, has been denied, and it is pleaded that the plaintiff had never been in possession, or owner of the land in question, rather it is in ownership and possession of Punama Ram, who purchased, and that there was one room, one Jhupa, and one Chhapra, and on two sides there is boundary of stone slabs, prior to purchase it was in possession of Purkha Ram, who had purchased it from Khum Singh, and had obtained permission for raising construction. Thus significantly, neither the pleading about breaking out of the fire had been denied, nor the motor vehicle body lying there, has been denied. This, coupled with the fact, that D.W.1, the defendant, has deposed in cross examination, "मुतनाजा प्लोट 3 फीट हिस्से मोटर की बोडी का हिस्सा मोतीराम ने जबरदस्ती झगड़ा हुआ तब रखा था। उसकी मैंने कोई

शिकायत नहीं की।". Then, D.W.2 has deposed that "विवादग्रस्त प्लोट में मोतीराम के मोटर की बोडी नहीं पड़ी है पास में पड़ी है जो चार साल से पड़ी है।".

Then, D.W. 4 has deposed, that he had taken the Bara on rent in Samvat 2026, and in cross-examination he has deposed, that at that time motor vehicle body was not lying there in that Bara, and has also denied that the motor vehicle body was lying in the plaintiff's Bara. Thus, this witness clearly denies even the availability of any motor vehicle body there. As against which, D.W. 7 has clearly deposed, as noticed above, that motor vehicle body of the plaintiff is lying there, partly in the plaintiff's Bara and partly in the disputed Bara, and that it was lying for the last many years, so much so, that even at the time of death of her husband it was lying in the same condition, and that her husband died in Ashad Samvat 2023, which corresponds to calendar year 1966. Thus admittedly motor vehicle body of the plaintiff was lying in the Bara, and it is also clear, that the learned lower Appellate Court has not considered the evidence of defence witnesses D.W. 2, D.W.6 and D.W.7. Then, a look at the statement of P.W. 5 does show, that he has deposed that he is a neighbour, living there for the last 33 years, and has deposed the motor body to be lying there since 1961-62, and the land in question to be in plaintiff's possession since long, and significantly there is no cross-examination on the side of the defendant on this aspect. Likewise P.W.6 has also deposed, that the Bara was in possession of the plaintiff

before 1972, and that in Samvat 2025-2026 the plaintiff had let it out to one Jat, where fire broke out, and the fodder was burnt. Then, in cross-examination he was suggested about the land being earlier belonging to Jagirdar Khum Singh and having been purchased from him in 1956. This witness has deposed to be living in railway quarter, being in railway service, and has maintained that motor body is lying there since beginning, so much so that he is seeing the body lying there since 1962-63. Likewise is the evidence of P.W.7. This evidence of the plaintiff has also not been considered by the learned lower Appellate Court, which, in my view, sufficiently establishes the fact, that the plaintiff was in possession of the land in question, till filing of the suit, and was in continuous settled possession.

In view of the principles propounded by Hon'ble the Supreme Court in Nair Service Society's case and in Somnath Berman's case, I need not go into the question, as to whether the possession of the plaintiff was since more than 12 years before filing of the suit, and the question required to be seen, only is, as to whether the plaintiff was in possession, and has been dispossessed within a period of 12 years. Then considering the side of the defendant, admittedly defendant claims to be in possession only under Ex. A-6 and Ex.A-2, and not otherwise, and that Ex.A-2 relates to the land covered by Ex.A-6. In that view

of the matter, a million dollar question, required to be examined is, as to whether Ex.A-6 at all relates to the land in question, so as to conclude, that Ex.A-2 confers any title, or possession in the defendant, or his predecessor in interest.

Since the plaintiff has been able to establish his possession, now it is for the defendant to show, that he has been in possession for 12 years since before filing of the suit, or that the defendant has better title. Since Ex.A-6 relates to a date more than 12 years before filing of the suit, it is required to be seen, as to whether Ex.A-6 and Ex.A-2 at all relate to the land in question.

In this regard I may start with recapitulating the settled legal position, about ascertaining the identity of the land, and I may refer to the judgment of this Court, in S.B.Civil First Appeal No.160/74 (State Vs. Jorawar Mal) dated 1.7.1986, wherein it has been held, that the property is to be identified by measurements, boundaries, survey number etc., and in case of conflict between the measurements, and boundaries, the identification by boundaries is to be preferred. On these principles, it is to be found out, as to whether the documents Ex.A-6 relates to land in question, and whether the document Ex.A-2 relates to land covered by Ex.A-6? A look at Ex.A-2 shows, that therein the property has been described by

measurements and boundaries both, inasmuch as the measurements given are, North South 32 हाथ, including boundaries, and East West 66 हाथ including boundaries. It is not in dispute, that one हाथ was equivalent to around 22 inch. Then, the boundaries of this entire property has been given, as public way in the North, and on the other three sides was shown to be the land of the seller. Of course, it is mentioned, that out of the purchased Pattasud land of the seller, three Jayaga have been sold, but then, the separate boundaries of each, or more, of the Jayaga has not been given, rather one collective description of boundaries has been given, and therefore, for ascertaining the land, covered by Ex.A-6, it is to be considered, that one rectangle chunk of the land of the measurements given, and situated within the four boundaries, as mentioned in Ex.A-6 was conveyed to the purchaser. Then, a look at Ex.A-2 shows, that thereby one plot measuring 32 हाथ North South and 22 हाथ East West was sought to be conveyed to the defendant, and boundaries of this property were given as, in the North 10ft lane, and thereafter the sellers own land, then in the South was shown to be the public way on which the gates will open, then in the East was shown to be land of Jagirdar Khum Singh, and in the South the land was shown to be of Mehtar Navaram. Admittedly in Ex.A-6, the main road is shown towards North, and in the South was shown to be the land of seller Khum Singh, while in Ex.A-2 the main road is shown to be towards South, and in the

North 10ft wide lane, and thereafter the sellers own land is shown. This sale deed if read in conjunction with the statement of D.W.-7, who is none else than the wife of seller in Ex.A-2, shows, that she is categoric, to the effect, that her husband had purchased only three plots from Khum Singh (obviously vide Ex.A-6), and from out of them one has been sold to Taja Ram, one is retained by her, and one is the disputed plot. Meaning thereby, that the land sought to be conveyed vide Ex.A-2, according to D.W.7 is no other land than what was conveyed under Ex.A-6. In that sequence if the two documents are read together, along with the statement of D.W.7, it would mean, that Purkha Ram claims title over 64 हाथ and 10ft. North South, 44 हाथ East West towards North upto the extent of 32 हाथ, then leaving 10ft. wide lane claims another 22 हाथ East West, comprising of the plot in question, which obviously is not the description or identity of the land covered by Ex.A-6. This coupled with the fact, that it is nobody's case, that in lieu of the land, conveyed to Purkha Ram vide Ex.A-6, he was allotted and granted any other land by the Municipality, including the land in question. Admittedly in the North of the land in question, after leaving 10 ft. wide lane, D.W.7 is in possession of one plot measuring 32 x 22 हाथ, and in west side is the plot in possession of Taja Ram, to whom it was sold by Purkha Ram. Consequently if at all there was any land, to which Purkha Ram had any claim under Ex.A-6, capable of being sold, it could be in

the East or West of the Purkha Ram's land, and it could not be in the North or South, as North South measurements are confined to 32 हाथ, and it is not, like that, any 3 rectangles of 32 हाथ x 22 हाथ could be claimed by Purkha Ram, anywhere in the town, or in the vicinity, to be sold to any body else.

Thus in my view it is clear, that Ex.A-6 does not relate to land in question, and Ex.A-2 does not relate to the land covered by Ex.A-6. That being the position about the identity of the land, it cannot be said, that even the person under these two documents was in possession of either of the land in question since the year 1956. Consequently, the defendant has not been able to establish a better title, or dispossession of the plaintiff, before expiry of 12 years, next before filing of the suit, or about the plaintiff being not in possession within a period of 12 years, next before the date of filing of the suit. Thus, the substantial question no. 2, as framed, is required to be answered against the respondent, and is accordingly answered. Likewise, the two questions, formulated by me for consideration, are both also, answered against the defendant respondents.

The net result is, that the appeal succeeds, and is hereby allowed. The judgment of the learned lower Appellate Court is set aside, and that of the learned trial

court is restored. The parties shall bear their own costs throughout.

(N P GUPTA), J.